

E-filed on 6/26/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JONES,

Plaintiff,

v.

BILETI, et al.,

Defendants.

No. C-05-04481 RMW
No. C-03-00128 RMW

ORDER GRANTING MOTION TO STRIKE

[Re Docket Nos. 18-22 in No. 05-04481]

On this court's own motion, the defendant Josephine Bileti's motion to strike or remand is deemed submitted on the papers. No oral argument will be held; no appearance is needed.

On July 17, 2002 plaintiff Matthew Jones filed a complaint for negligence against Josephine Bileti in Monterey County Superior Court. Mr. Jones removed that action here on January 9, 2003, where it became Case No. 03-00128. The court remanded the action to the Monterey Superior Court on March 18, 2003. Case No. 03-00128 was closed.

On November 3, 2005 Mr. Jones' mother, Alberta Rose Jones, again removed the case from the Monterey County Superior Court, where it was renumbered as Case No. 05-04481. On February 22, 2006, this court again remanded the action to the Monterey County Superior Court, stating that "Mrs. Jones is clearly a sham defendant, did not file a notice of removal within 30 days of receipt of


her son's complaint, and fails to articulate a viable grounds for federal jurisdiction." Case No. 05-04481 was closed.

On May 25, 2006, Mrs. Jones filed in Case No. 05-04481 a document purporting to be a second notice of removal. Bileti's attorney represents that Mrs. Jones did not file this document with the Monterey County Superior Court before the May 26, 2006 hearing on her motion to dismiss (though Mrs. Jones did provide Bileti's attorney with a copy, and he informed the Monterey County Superior Court that he had received it.) Scharf Decl. (docket no. 22 in Case No. 05-04481) at 2. The Monterey County Superior Court dismissed the action the day of the hearing. *Id.*, Ex. A.

Bileti now moves to strike Mrs. Jones's second notice of removal, or, in the alternative, remand this action to the Monterey County Superior Court. Nothing in Mrs. Jones's second notice of removal contradicts this court's reasons for remanding the case four months ago.¹ However, as it appears that the Monterey County Superior Court dismissed the action, there was nothing to remove. Mrs. Jones's second notice of removal therefore should be stricken, rather than the action remanded. Bileti's motion to strike is granted.

Cases nos. 03-00128 and 05-04481 are closed and the clerk shall accept no further filings in either.

DATED: 6/21/06


 RONALD M. WHYTE
 United States District Judge

¹ "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). It appears that this court lacks jurisdiction over this case.

1 **A copy of this order was mailed on _____ to:**

2 **Plaintiffs:**

3 Matthew Jones; Alberta Rose Jones
4 1144 Tangerine Way
Sunnyvale, CA 94087

5 **Counsel for Defendants:**

6 James A Scharf
MacMorris & Carbone, Attorneys at Law
7 1735 Technology Drive
Suite 500
8 San Jose, CA 95110

9 **A courtesy copy will be sent to the Monterey County Superior Court:**

10 Hon. Michael S. Fields
15 Monterey Courthouse
11 1200 Aguajito Rd., 2nd Floor
Monterey, CA 93940

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13 Counsel are responsible for distributing copies of this order to co-counsel, as necessary.
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